

Newfields Planning Board Meeting Minutes
June 11, 2020

Attendance: Chairman John Hayden, Bill Meserve, Jeff Feenstra, Town Planner Glenn Greenwood, Mike Price, Jamie Thompson, Mike Todd and Jeffrey Couture.

Chairman Hayden called the meeting to order at 7:05pm and took a roll call vote.

Old Lee Rd Lot line Adjustment and 6-Lot Subdivision-Map 208 Lot 14 & 15

John Hayden said the first item on the agenda was to address a letter received from Bobby Kelly prior to tonight's meeting. He read the letter into the record. See attached.

Glenn said that this is an unusual turn of events. The Board was asked by Bobby Kelly to address the lot line adjustment first and separately from the subdivision; and they did. In the interim, it was determined that the location of the house on lot 6 is now directly behind the Kelly residence. Regardless, the board voted and approved the lot line adjustment at the March meeting, but the mylar, has not been signed. A formal vote of the Board would be needed to reconsider their previous action to approve the lot line adjustment.

Attorney Cronin stated that Bobby Kelly attended the meeting when the lot line adjustment was voted on and had no objection to it at that time. Mr. Kelly does not have the right to determine the location of the house on lot 6.

Julie LaBranche said that if the property owners, Bobby Kelly and Robin Marcotte do not agree to sign the mylar, the subdivision is invalid. If they don't sign the Mylar how can the lot line be approved if the one of the owners are not party to the application.

Attorney Cronin said that Mr. Kelly encouraged the Board to vote for the lot line adjustment first and he was present at the meeting of the vote. There was no defect in the notice.

Glenn reiterated that the Board acted on the boundary line adjustment at the request of Mr. Kelly. Bobby Kelly was at the March meeting and interested in the application moving forward. The lot line adjustment has always been noticed separately. The application in March was the first time Mr. Kelly had seen the new lot configurations.

Bobby Kelly said that after the decision, it was made clear that the proposed plan before the Board was different and he was concerned with the lot line application. His name is on the application and it looks like he is proposing this subdivision on Old Lee Rd.

Attorney Cronin stated that since Bobby Kelly was there at the meeting, it was assumed that he was okay with it.

Bobby Kelly commented that he did express concern with the location of the home on lot 6 at the March meeting.

John Hayden from the beginning of the application and in the preliminary discussions the Board was aware of the deed covenant and the requirement to relocate the access area. He agrees that it was clear from the start that the relocation from its current location where the driveway is, was something the board needed to act on first.

Glenn stated that throughout the process the agreement with Mr. Kelly was that the boundary line adjustment be acted on prior to any other action taking place.

Bobby Kelly understands the board approved the boundary line adjustment, but it is still not done. Mr. Peterson is a huge agent in that process. That process may not proceed as expected pending the results of the remainder of the application.

John Hayden mentioned that it has been clear since the application was submitted that the deeded access was a requirement that needed to happen as the deed covenant states. It was proposed that the Board act on the lot line adjustment first; the board acted on it; and to date there is no signed, recorded, or approved plan. Once this plan is approved or denied, if Bobby Kelly has an issue with a portion of the application, he has every right to appeal the decision made.

Mike Todd asked if Bobby Kelly was more concerned with the location of the residence on lot 6. The revised plan came out in April and he asked if that had changed in his opinion. Bobby Kelly replied that he may be confused as to the specific components of the process. The fact that this is one big application that he is listed as an applicant concerns him. He is being asked to give approval of one component of the application for it to move forward. He was unaware of the house location on lot 6 until the night of the vote on the lot line adjustment. The boundary lines as drawn for the new access strip has not changed from the original application. He agrees with the dimensions of the boundary line. If this were two separate applications, he would have been able to move forward and act as two separate parties and move the access strip. Because of the combination application it is challenging. If the Board denies the application, he is concerned that nothing will be done with the lot line adjustment.

Gayle Davis commented that the lot line adjustment was a prerequisite to considering the plan moving forward. This has been asked for several times and she believes it is a stall tactic by the developer. John Hayden replied that as he sees it, for the lot to be developed the access needed to be moved and that has been done and is shown on the plan. He doesn't see how that can be a stall tactic.

Bobby Kelly said that if the Board does not approve the subdivision, the lot line adjustment, which was part of the first application, may not move forward.

John Hayden said if the subdivision does not take place, he is not sure the need to move the access point. If the development does get approved, the access will be deeded. Bobby Kelly said that every time he accesses his driveway or plows it, it is technically on Mr. Peterson's land because the access has not moved.

The Board discussed outstanding items from last month's meeting.

Cost estimates for maintenance of the stormwater system were discussed.

Mike Price commented that he thought the cost would be borne by the developer. Mike Todd added that the costs would be the responsibility of the developer until the Town accepts the road.

Mike Todd is concerned with maintenance of the system. He has had experience with them but only in commercial developments. He did some research and found that these types of systems are not usually designed for residential because they must be maintained. They do design them in larger communities with a standing Department of Public Works. In private communities the systems are maintained by a Homeowners Association. At the last meeting, we learned that the life of the system is determined by

the media, soil, and sand, bark mulch, etc. Those are long lasting. These systems have only been around for the last 10 years so there isn't much evidence on how long they last. It could be 10-20 years. They need proper maintenance of the loam and vegetation, which is above filter media, and who will maintain it if the Town does not. Mike asked Dan if there was an alternative to this media design.

Dan said this is an appropriate bmp (best management practice) for this site, given the way the lot is configured and cul-de-sac. The bioretention, which is a rain garden, was recommended by NHDES rather than a mulch layer on top with plantings. The soils around the cul-de-sac are well drained and will percolate through indefinitely. He would not mind speaking to the civil engineers Mike Todd spoke with. There are other alternatives, but they may not be as well fitting in the center of a cul-de-sac as this one.

Attorney Cronin said it is the property owner's responsibility prior to acceptance of the road. There are several ways in which to manage the stormwater systems. One way is a homeowner's association. It is not unusual to have a declaration of covenants and restrictions that would bind the homeowners or unit owners to maintain and contribute to the cost of the maintenance. There doesn't have to be a homeowner's association. It can be handled in the deed language.

It should be properly conditioned and shown on the plan by the engineer, who will be responsible and that it will not be the town's burden. It will be up to the people who own the lots. Mike Todd went on the record as stating he is in favor of this approach for maintenance of the two ponds and bioretention to be the responsibility of the homeowners and part of their deed language.

Mike Price asked what the incentive would be by the owners to maintain the stormwater systems when it will only cost them money. Who will enforce that the maintenance gets done?

Attorney Cronin stated that it would be irresponsible of the homeowners if this is written in their deeds and the maintenance is not done; they have a duty to do it. The Planning Board could revoke the subdivision if this happens or the code enforcement or building inspector could enforce it. He does not know of any issues that have arisen to that level that the Town would have to get involved. The State has designed these types of systems and reviewed them carefully and they need some maintenance, but it is not an over burden. As far as private property rights, it would probably be more of an impact on abutting owners if the maintenance does not get done. This is a 6-lot subdivision which is relatively small.

Bill asked who would develop the deed language. Attorney Cronin said he could create it and the town attorney could review it to make sure it is enforceable. Attorney Cronin said it could be a condition of approval. He would like to get a vote tonight.

Julie LaBranche commented that the State never approved the stormwater system because it did not go for an alteration of terrain permit. The local engineer from RCCD has reviewed it. The subdivision requirements under Stormwater Management states if the town were to take this over it would require routine inspections and compliance with approved stormwater management protocols. Those protocols should be followed for a 2-year period before the town would take over the road. Whether the developer or landowner owns the systems, it requires a stormwater management and sediment erosion control plan agreement. During the 2-year period the stormwater systems would need to be inspected annually and a maintenance plan in place. This includes the two stormwater systems and fire retention

area. In her opinion, relying on private landowners to maintain a raingarden is questionable. Julie LaBranche added that Dan MacRitchie's letter states the stormwater systems require zero to no maintenance to allow them to function properly. Gerry Lang's memo states maintenance is absolutely required. The DES Stormwater Manual dated 2009 states there are a series of maintenance requirements for grass line swales and detention areas. The UNH stormwater site also has a best management stormwater practices checklist for raingardens, grass line swales and detention areas. There is annual maintenance required for the inlets and outlets covered in stone, woody vegetation and shrubs, removal of collected sediment, debris and trash. She is concerned that these requirements are a lot of responsibility for a property owner. What assurance does the Town have that the maintenance will be done?

Attorney Cronin asked what had been done in other subdivisions.

John Hayden said Overlook Drive does have a homeowners Association. He recalled that most recent subdivisions have had Homeowners Associations. He is not sure if any of the subdivisions have stormwater systems to the extent that this is proposed on this one. There were some small runoffs that may have needed specific review in the Lily Land Subdivision, but most subdivisions predated the stormwater management ordinance. It has just been in the past 4-5 years that the ordinance has been ramped up.

Julie LaBranche said that if something were to happen with a large storm event causing the stormwater system to fail the property owner would have to pay out money to fix it which concerns her. The stormwater comes from the entire road which affects more than just one lot. There is no insurance for stormwater structures, and it would be a burden on the homeowner to maintain a stormwater structure that would eventually be part of a public roadway.

Jamie said the Road Agent does a survey at least yearly, of all the culverts, both private and owned by the Town. The Town has a great interest in making sure these systems work properly because they affect erosion along roads and have impacts to property owners. If something were to happen to the stormwater system, the Town would get involved.

Mike Price asked Julie LaBranche's opinion on whether it is a good idea to have a Homeowners Association or rely on the Town to inspect and disperse the fees to the appropriate homeowners, if necessary.

Julie LaBranche stated she was just raising questions and does not take sides either way; either method is effective. In her opinion, she would prefer the Town to have an easement and assume maintenance.

Glenn asked the Board to be cognizant of the direct design requirements of the stormwater regulations. In his experience, stormwater systems are the direct responsibility of the Town once the road is accepted. This ensures that the roadway stays in proper functioning state. If the stormwater devices are not maintained the road will become damaged. He does not agree with relinquishing the stormwater system responsibility on the homeowners.

Mike Todd mentioned that he was referring to the bioretention pond system which we don't have any of now. It is a design that is typically required by an alteration of terrain permit. In his opinion, there are other alternatives and whatever we decide will be setting a precedent in town. He is not referring to catch basins or headwalls.

The Board discussed the staging effect of building the road. There were concerns that the amount of disturbance was just under 100,000 sf and whether the phased construction of the road could be done in a way that would not adversely impact areas beyond the 99,000sf proposed.

Mike Todd discussed the roadway limit of work area. He asked if the area around the roadbed was used to compute the 99,000 sf. He is concerned that in some areas there is 2-3 feet from top of slopes to the dash line on the plan and it does not include any disturbance at second wetlands crossing. In his opinion, this is very tight and there is no marked out or planned staging area. The cul-de-sac will most likely be built last. It seems inevitable that the impact will be greater than 100,000sf.

Dan said the second wetland crossing is a driveway crossing. The alteration of terrain permit is written that the individual lot disturbance shall not be included in the calculations. It is not part of the road construction; it is separate. Also, Gerry Lang from RCCD looked at this and thought it could be done. There was some discussion about perimeter controls being in place. Which is a solution that would allow an inspector to come out and determine whether the disturbed area was staying within the limits as agreed to.

Bill Meserve agreed with Mike. Having a considerable amount of construction experience it will be amazing to see how the developer stays within these limits. He believes there should be notes on every drawing stating, limits need to be defined before construction starts. RCCD suggested using the bioretention area for staging but during construction the cul-de-sac will be needed for stormwater control. He is concerned with trucks going up and down the road, it cannot be cost effectively done. If there was a storm event during construction, it could potentially destroy the wetlands. He would like to see an approved sequence of work to make sure the stormwater quality erosion is always being monitored. By limiting this, there may be disruption on Old Lee Rd. He sees truck traffic turning around on Old Lee Rd. If this development gets sold, we want to make sure the buyer knows this will be monitored.

Mike Price asked what happens if the disturbance exceeds the 1,000 sf. Dan replied that an alteration of terrain permit would need to be applied for if the person building the road doesn't feel it can be done within the limits.

Bill wanted to know why the applicant did not want to complete an alteration of terrain. He suggested creating a staging area on one of the lots. Dan stated that Gerry Lang has agreed that it can be done, and it is just another cost to apply for the alteration of terrain.

Bill would like to see strong language on the plan to protect the wetlands and the town. Dan said that any language the Board would like to see should be in the conditions of approval.

Julie LaBranche stated the wetlands impact of the driveway on lot 6 is part of the conditional use permit. This is a small subdivision but has challenging site conditions that need to be taken into consideration. She would like to see a detailed erosion and sediment control plan sequence. The applicant is proposing phasing within the 99,000 sf area proposed, and she feels that needs to go along with the plan. She is curious to know where equipment and stormwater system controls will be stored on the site. She also suggested a sequence of construction agreement and an inspection by the town engineer to ensure the limits of disturbance are clearly marked and staked and the erosion controls are in place. She feels there is a lot of detail that is missing from this application. Without an inspection protocol no one will

know if the areas of disturbance have been exceeded. These are standard elements when there is an alteration of terrain permit and contingencies need to be in place. She is also concerned with the condition of the wetlands in the event of a rain event.

Bill said that with an alteration of terrain permit the items Julie LaBranche mentioned would be addressed. The site is buffered by wetlands with one way in and one way out. He agrees there should be a sequence of work and a detailed erosion control plan in place. He would not approve the plan until that is done.

Jamie Thompson asked if the Board could approve the plan with the condition of getting an alteration of terrain. Mike Todd replied that it was reasonable. Mike Price agreed.

Glenn said it is troubling that the applicant has come so close to having to obtain an alteration of terrain permit and not moved forward with one but he has presented a plan that has been reviewed by Gerry Lang who states the activity is appropriate from his review standpoint. There is the ability for the development to occur in the plan thresholds as it stands. The Planning Board is within their rights to determine the conditions of approval but be aware the applicant had an engineer review the plans and he believes the work can be done within the 99,000 sf threshold.

An alteration of terrain permit could take months according to Mike Todd.

Bill read Gerry Lang's comments that stated he thinks a contractor can complete this work within the limits of the perimeter but would have to do a good job at preplanning to stage and construct the road in stages. Bill would like to see that.

Glenn said an actual perimeter fencing at the 99,000 sf will prevent any activity from going beyond the threshold. This is a constraint the applicant is putting on themselves.

John Hayden mentioned that Farwell Engineering has done inspections in the past on behalf of the town. All roads being constructed in subdivisions have always been inspected and monitored by an engineer on behalf of the Town. It is part of the approvals and bonding. There would be an engineer but at this point we have not designated who that shall be.

Julie LaBranche asked at what point in the approval process the construction cost estimate would be determined. John Hayden replied that in the past the Board has not always had that information prior to approval. Mike Todd added that generally cost estimates and bond requirements are part of the conditions of approval once we have consulted an engineer. The engineers schedule may be more frequent than weekly due to the constraints of the site.

Glenn noted that the requirement of the subdivision regulations is for a cost estimate surety be in place for our approval.

Julie LaBranche commented that a condition of approval is an item that needs to be met prior to the mylar being signed and recorded, which may take a couple of months. Glenn added that the Town Engineer will come up with the cost estimate.

Julie LaBranche said that for the Engineer to come up with a cost estimate they would need the detailed construction sequence. It is not up to the Town Engineer to come up with the construction sequence and detailed construction plan.

Mike Todd asked about the road length waiver and wanted to know how we got to 1,000 feet to the cul-de-sac. Jamie said the 1,000 feet makes sense to him.

John Hayden said that we have a waiver request before us for the road length and a conditional use permit that we need to address.

Julie LaBranche discussed the Conditional Use Permit (CUP). A memo from Dan MacRitchie dated March 20, 2020 outlines 3 of the 5 criteria for a conditional use permit that are required. One of the criteria not addressed is 7.9.5-Economic advantage alone is not reason for the proposed construction and the other; the construction is essential to the productive use of the land. The applicant is contesting that they need a waiver for the road length. She is wondering what the rationale is for the road length waiver. In her opinion, the purpose of extending the road is to gain 4 additional lots, which addresses economic gain. She is struggling to see a strong rationale or justification for the wetland impacts.

John Hayden asked Glenn for his opinion regarding Dan MacRitchie's interpretation of whether the road is a cul-de-sac. Glenn stated the proposed roadway is a cul-de-sac and that has been the Board's opinion.

In April of 2019 he had presented a proposed plan with a much longer roadway and many more lots. It was made clear by the Board that the plan was unreasonable. There was discussion about what road length would be reasonable. Bill Meserve had indicated in April 2019, that 1,000 feet was reasonable. In May 2019, Mike Todd made a motion for a subdivision that complied with the 650 feet. That motion was withdrawn and instead a motion was made to provide a plan which incorporates the ability to provide flexibility to the road length standards. The 1,000 feet was guidance from the Board. The applicant is looking for an approval on a plan where they have done everything they have been asked to do. Dan noted that he submitted an updated waiver request earlier in the day, June 11, 2020.

Julie LaBranche added that just asking for a waiver does not meet the criteria unless they provide rationale as to why they are asking for it.

Dan responded that the waiver request does have rationale and you may agree or disagree with it.

Attorney Cronin replied to Julie LaBranche's comments on the waiver request. He stated the two standards are, strict conformity would pose an unnecessary hardship to the applicant and the waiver would not be contrary to the spirit and intent of the ordinance. Strict conformity is not necessary because the purpose of the cul-de-sac length was for firefighting purposes and the Fire Department has no issue with the proposed road length. The size of this parcel is 36 acres and the project has been downscaled significantly from 12 lots to 6 lots. The houses at the end of the cul-de-sac may also have sprinkler systems installed, if necessary. The spirit and intent of the regulation for the site plan are for fire and safety. The site will meet fire and safety, new homes being built according to life safety codes and will meet all criteria and be more safety compliant than older homes in town.

John noted that we will be taking a vote on the conditional use permit and road length waiver.

Mike Todd said he is not prepared to vote on either of those items tonight. More information is needed in his opinion.

Bill Meserve said we also need a second conditional use permit on the access for lot 6. He sees it as two separate items. He asked if a separate conditional use permit was needed.

Julie LaBranche commented that nowhere in the subdivision regulations does it state that cul-de-sac length was conditioned upon fire safety. It simply states cul-de-sacs shall not be more than 650 feet.

Bill mentioned that we need costs for sidewalks.

Mike Todd asked the Conservation Commission for their input. Steve Shope said this is known to be an area of rare species habitat. They would like to ask for an environmental impact assessment, which they asked for last year in their comments of July 2019.

Glenn said an environmental specialist would perform the impact statement. There would be no benefit to have an environmental study done as a condition of approval. The Board would need to consider the report prior to deciding on approval.

Steve Shope added that the Conservation Commission would like to be included in the decision on who will perform the environmental assessment.

Bill Meserve feels we should not dismiss our Conservation Commission and we should require the study be completed. Mike Todd agreed. From day one environmental concerns have been brought up according to Bill.

Jamie questions whether these concerns had already been addressed by NH Wildlife Biologist and the Lamprey River Advisory Committee. Steve Shope replied no. Bill added that the LRAC noted some concerns with this project also.

Julie LaBranche suggested that the study also include weighing in on the five criteria needed to grant the conditional use permit.

A motion was made by Mike Todd and seconded by Bill Meserve to request the applicant to complete an environmental impact assessment, per request of the Conservation Commission, in order to assist the Planning Board with the assessment of the conditional use permits with regard to wetlands crossings. A majority of the Board was in favor and the motion carried. Yes-6, No-1.

Glenn will work with the Conservation Commission to find a consultant to do that work. Jeff Couture will work with Steve Shope on hiring a consultant to perform the study. Glenn added that the cost will be paid by the applicant.

Dan asked why the Board didn't request the environmental impact study back in November of 2019 when it was recommended by the Conservation Commission. There would have been plenty of time to get it done prior to now. Bill stated that we are now seeing more details of the plan, we just got comments back from Gerry Lang of RCCD and there are questionable issues that have been brought up.

Bill Meserve feels there should be a separate conditional use permit for the wetlands crossing on lot 6. Glenn stated a separate conditional use permit for each crossing is appropriate.

Julie LaBranche asked about the plan set cross sectional details of the rain garden or bioretention area.

Dan replied that he has gone through four rounds of reviews with RCCD and issues brought up have been addressed.

Glenn reviewed additional information that has been requested. Details on construction sequencing and staging within the 99,000 sf area and sample deed restrictions from Attorney Cronin.

John Hayden reviewed his list of items he jotted down as part of the conditions of approval. Construction sequencing, phased construction detail, fence erosion control, drainage construction information, and current status of Old Lee Rd and protection against damage.

Glenn suggested that more information on construction details and management of activity on the 1,000 sf area would be appropriate.

John Hayden asked when it would be appropriate to engage construction cost estimates and determine who will conduct the engineering of the roadway. It would be helpful to get that information between now and next month's meeting.

Dan MacRitchie stated that the applicant does not agree to the continuation. He will work on the above items in the meantime. Glenn added that he understands the applicant is not in favor of continuing the hearing but according to Emergency Order #23, which is still in effect, the Board has the right to move forward this way. Dan added that if the Order is not renewed it will not be in place for the next meeting.

Mike Price asked whether there was a decision made on having a Homeowners Association or deed restrictions for the maintenance for the stormwater systems. John said the Board had not decided.

Attorney Cronin said he would draft a deed he would be happy to do it. He did recall that there was a comment that it was not a good idea. If the Board recommends that there be a Homeowners Association, it can be recommended to Mr. Peterson. He can draft a HOA document.

Bill would like Glenn to get guidance from Town Counsel Derek Durbin about what would be best for the Town. Glenn will reach out to Derek Durbin.

Jamie said if we do decide to ask for a Homeowners Association, we should let the applicant know so they can be prepared for the next meeting.

Mike Price ask if we need to get Road Agent Brian Knipstein involved in the impacts on Old Lee Rd. John was not sure if Brian needed to get involved at this point or if the Engineer that will do the review and construction.

Glenn suggested contacting Farewell Engineering to oversee the engineering of the roadway. Bill Meserve asked if it would be appropriate to place a bond on Old Lee Rd for potential damage and repairs.

Jamie Thompson said a bond would be posted for the road being built and any damages to Old Lee Rd. It would be included and released accordingly as the project is completed.

Julie LaBranche asked if an alteration of terrain permit was necessary. Bill Meserve noted that the sequence of construction would address the Board's concerns. John Hayden did not feel that asking the applicant to get a permit that is not required if they have provided us with their engineering and construction and it has been reviewed by our peer review. He is not comfortable asking the applicant to get an AOT if it isn't required. Mike Price agreed.

Julie LaBranche also asked if the Fire Chief had weighed in on the fire cistern.

Jeff Feenstra indicated that the Fire Department has a standard they abide by when installing cisterns. It will most likely be a 30,000-gallon cistern.

Jamie suggested that we have an understanding with the applicant on when the environmental assessment study should be submitted to the Board for review. John Hayden noted our rules and procedures require 14 days prior to the hearing date but for this application we should consider waiving that requirement if we can get the report in a reasonable amount of time. Glenn said a week before the hearing would be appropriate otherwise, we would have to continue the hearing again. July 3rd would be fine.

A motion was made by Bill Meserve and seconded by Mike Price to continue the hearing until July 9, 2020. All were in favor and the motion carried.

Bingham Junction-Site Plan Review Map 202 Lot 20.1

The owner has requested in writing to withdraw his application.

John Hayden & Barbara Hayden-Site Plan Review-Map 202 Lot 4 & 10.1-Continued Hearing

John Hayden requested a continuance of the hearing until July. A motion was made and seconded to continue the hearing. All were in favor and the motion carried.

Bill got the letter from DOT on the convenience store/gas station regarding their concerns on the Route 108 access and Route 85 access. He wondered if the Board should contact DOT. John did not feel the Board should get involved. Glenn noted that the applicant may have to complete an amended plan and come back before the Board.

Jamie mentioned that he was in the process of notifying the owner of Dexter Estates with regard to their signage in the stone wall. He was unable to find any language in our ordinances to back up the decision to have the signage removed.

A motion was made and seconded to adjourn the meeting at 9:45pm.

Respectfully submitted,

Sue McKinnon